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84-359

Case No._____

SUPREME COURT OF THE UNITED STATES

October Term, 1984

In Re: CYRIL E. SAGAN

Petitioner/Appellant

vs

REV. JOHN A. HARVEY
THE PITTSBURGH CATHOLIC and
THE CATHOLIC DIOCESE OF
PITTSBURGH

Defendants/Appellees

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION

Cyril E. Sagan, Pro Se
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33pp

QUESTIONS PRESENTED

1. Does the public have the right to learn views opposing the election of a judge?

2. Do newspapers abuse freedom of the press to obstruct voter access to knowledge which opposes the election of a judge?

DEFENDANTS IN COURT BELOW

The defendants are:

1. Rev. John A. Harvey, former Executive Secretary and General Manager of the Pittsburgh Catholic, diocesan newspaper for the Diocese of Pittwburgh.
2. The Pittsburgh Catholic, diocesan newspaper for the Diocese of Pittsburgh.
3. The Catholic Diocese of Pittsburgh.

TABLE OF CONTENTS

		Page No.
	Questions Presented	
	Defendants in Court Below	
	Table of Authorities	
I.	Prayer	1
II.	Report of Opinion Below	2
III.	Jurisdiction	4
IV.	Constitutional and Statutory Provisions	5
V.	Statement of the Case	7
VI.	Jurisdiction Below	15
VII.	Reasons for Granting Writ	16
VIII.	Conclusion	18
	Appendix	

TABLE OF AUTHORITIES

		Page No.
A.	Constitutional Provisions	
	Article III, Section 2, Clause 1	5, 15
	Amendment I	5, 9, 10, 15, 16
	Amendment IX	5, 9, 15
	Amendment XIV	5, 9, 14, 15
B.	Statutes and Rules	
	42 USC 1983	4, 6, 9, 10
	Rules of Supreme Court, Rule 17	4
C.	Cases	
	Gomez vs. Toledo, 446 US 635, 100 S. Ct. 1920, L. E. 2d, 572 (1980)	12
	Miami Herald vs. Tornillo, 418 US 241 (1974)	12, 13

PETITION FOR WRIT OF CERTIORARI

I. PRAYER

CYRIL E. SAGAN, petitioner acting Pro Se, petitions this Court to issue a Writ of Certiorari directing and ordering that political advertising be open to all points of view, with particular emphasis dealing with the election of judges.

II. REPORT OF OPINION BELOW

The petitioner sought relief in the U.S. District Court for the Western District of Pennsylvania in the initial complaint, filed on April 28, 1983, which would prevent the Pittsburgh Catholic, newspaper for the Catholic Diocese of Pittsburgh, from refusing a nondefamatory advertisement (See Apendix D-1) opposing the election of Patrick R. Tamilia to the Superior Court of Pennsylvania. On May 5, 1983 District Judge Maurice Cohill denied the petitioner a restraining order to direct the Pittsburgh Catholic to print the ad. One July 20, 1983 a status conference was held before District Judge Alan N. Bloch who set November 11, 1983, later changed to November 18, 1983, as the date for a pretrial conference, a date which precluded any effect on the Pennsylvania judicial elections the week before (See App. A-1). On November 15,

1983 Judge Bloch issued a Memorandum Opinion and a Judgment Order dismissing the petitioner's complaint without prior notice that the pretrial conference was cancelled, (See App. B-1). On June 8, 1984 the U.S. Court of Appeals for the Third District affirmed the judgment of the District Court.

III. JURISDICTION

Jurisdiction to grant a Writ of Certiorari is within the inherent power and Rule 17 of this Court. While such a writ is not a right, it may be extended to issues of importance, as those dealing with fundamental rights and interests of justice protected by the First, Ninth and Fourteenth Amendments to the U.S. Constitution and by the Civil Rights Act of 1871, Title 42 USC 1983.

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Article III, Section 2, Clause 1.

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of of the United States, and treaties made, under their authority..."

2. Amendment I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; pr the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

3. Amendment IX.

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

4. Amendment XIV, Section 1.

"...No state shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of of the laws."

5. Civil Rights Act of 1871, 42 USC 1983.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, priveleges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

V. STATEMENT OF THE CASE

1. This petition is filed pursuant to the authority of this Court to issue writs for important reasons in protecting riths of citizens under the First, Ninth and Fourteenth Amendments and the Civil Rights Acts in order to direct and to order that political advertising be open to all points of view, particularly in the election of lower judges.

2. When the initial complaint was filed, U.S. District Judge Maurice Cohill of the Western District of Pennsylvania denied the petitioner a restraining order which would allow the petitioner's advertisement to appear in the Pittsburgh Catholic, official newspaper for the Catholic Diocese of Pittsburgh in a timely fashion. He failed toissue a written opinion which he had promised.

3. The ad sought to express to Catholic voters of the Catholic Diocese of Pittsburgh opposition to the election of Patrick R. Tamilia for judge of the Superior Court of Pennsylvania (See App. D-1). In the past this newspaper printed at least 27 paid political ads, including the type expressing opposition to the election of a judge (See App. E-1). Rev. John A. Harvey, at that time Executive Secretary and General Manager of the newspaper, refused to print the ad. In a conversation with the petitioner, he said the newspaper would not print the ad because "We don't want to get into any trouble", implying that the judiciary would inflict some injury upon the newspaper for accepting the ad. Rev. Harveyalso stated that his newspaper does not print "anti" ads. This last claim is untrue because this same newspaper printed such ads for the petitioner previously

(See App. E-1).

4. The position of Rev. Harvey appears as a violation of the First, Ninth and Fourteenth Amendments. And with resulting judgmental support of the courts appears as violation of the Civil Rights Act, 42 USC 1983. Section 1983 enforces federal constitutional rights by providing a private cause of action. The petitioner was denied a right of expression to Catholic voters. As a member of a protected group opposed to the election of Patrick R. Tamilia, he was denied his civil rights. As such it is proof that the defendant caused the petitioner "deprivation" of certain rights under Section 1983. Deprivation also violated the "rights, priveleges or immunities" clause secured under the Fourteenth Amendment and Section 1983. Refusal to print the ad caused injury to the petitioner by denying him free express-

ion to free-thinking voters. Furthermore, the newspaper exerted unfair influence on an election in not accepting my ad while accepting other ads for judicial candidates (See App. F-1 and App. G-1). Does a newspaper have the right to shut out an advertiser expressing opposition to a potential judge?

5. The petitioner contends that his ad was nondefamatory (See App. D-1) and that a precedent had been established by the newspaper to print such ads (See App. E-1). Instead the defendants assumed a chameleonic posture in reversing themselves. By refusing the ad the defendants violated the First Amendment and the Civil Rights Acts, preventing the petitioner from speaking and publishing as other political advertisers were permitted. Declining to print the ad also violated the Ninth Amendment which protects rights ret ained by the people who want to recommend opposition to a judicial candidate.

6. By claiming it does not accept ads expressing opposition to a judicial candidate, the newspaper establishes an artificial discriminating norm in advertising. It is unfair to the public interested in learning about judicial candidates, for there is, after all, such meager information available to the public about judicial candidates.

7. When the Pittsburgh Catholic did accept a political ad favoring the election of Patrick R. Tamilia (See App. F-1) it did in a real sense accept an "anti" ad since it promoted this candidates interests "against" other candidates running for the same office. As a matter of fact, the ad placed in support of pro-life judicial candidates (See App. G-1)does not list Patrick R. Tamilia as a pro-life supporter and therefore is an "anti" ad against him by implication. Isn't a pro-life candidate

"anti" to abortion-advocating candidates? And in the case of retention voting for judges the "yes/no" vote is also a negative form of advocacy. Newspapers can take all kinds of postions, promoting certain candidates, but can newspapers act discriminatorily by denying the petitioner his point of view by denying fair and civil rights? Access to the public by the petitioner is also upheld by common law.

8. Gomez vs. Toledo (446 U.S. 635, 100 S. Ct. 1920, L. E. 2d, 572 (1980)) states that a plaintiff must allege that some person has deprived him of federal right. The petitioner contends that Rev. Harvey did deny him a right of access to voters.

9. In Miami Herald vs. Tornillo this Court found under the First Amendment that editors may freely edit their newspapers without constraint. But this case does not extend to the immediate case since

Tornillo was a candidate himself, whereas the petitioner was not a candidate seeking access to free expression as an office-seeker. The petitioner represented voters as a member of a protected group who merely opposed a judicial candidate and he so desired to inform the group. If a physician cannot withhold medication or treatment of a patient infected with a contagious disease potentially harmful to the public, neither should a newspaper withhold advertising space opposing a potentially poor judge for the common good. How else can the public acquire a balanced diet of information on its judges? More important, why should we not have a balanced diet?

10. When District Judge Bloch scheduled a pretrial conference (See App. A-1), then cancelling it without notice to the petitioner while he issued a postdated Judgment Order (See App. B-1), he precluded the

petitioner any benefit of due process and equal protection under the Fourteenth Amendment. Moreover, the fact that Judge Bloch scheduled the pretrial conference after the election was over was grossly unfair to the petitioner, whose complaint was intended to inform the public through his ad before the election. Such an action hints of diabolical design as well as suspected unwritten bias in mutual backscratching between the judiciary and the media. Perhaps it is this equilibrium which Rev. Harvey did not want to disturb when he said he did not want to print the petitioner's ad because "we don't want to get into any trouble". If so, it is a sad commentary on the freedom of the press and impartial justice.

VI. JURISDICTION BELOW

Jurisdiction below was conferred on the U.S.District Court and the Appeals Court by the U.S. Constitution, Article III, Section 2, Clause 1, by the First, Ninth and Fourteenth Amendments and by 42 USC 1983.

Every federal court, once constituted, has jurisdiction over deprivation of rights guaranteed by the Constitution.

VII. REASONS FOR GRANTING THE WRIT

Subtle conflicts under the First Amendment between protections of free speech and free press are resolved through this Court. This Court has tended to skew First Amendment protection in favor of free press. Oftentimes this Court is asked to give more balance to an individual's freedom of speech.

The issues addressed by the petitioner represent an attempt to secure locigal and fair protection of free speech. It is especially important for this Court to an issue as related to the judiciary. It is important to recognize that the ultimate authority of the citizenry seeks to buttress the authority of the judiciary.

It was and still is the petitioner's purpose to promote the best available members to thecourts. It was his intention

to alert voters on the qualifications of a judicial candidate, whether the public accepted it or not.

In this period of ever-weakening confidence in the judiciary it is important for the public to regain ever-strengthening trust in its courts. It is also important to realize that the judiciary is subordinate to the authority of the citizenry. One way to regain respect and trust in the judiciary is to educate voters so they may make better and best choices in elected lower court justices.

VIII. CONCLUSION

Wherefore, the petitioner asks this Court to issue a writ of certiorari so that its directive will effectuate political advertising that is more fair and open to all points of view in the election of judges, thereby avoiding real and potential abuses in freedom of the press which tends to limit voters' access to knowledge of judicial candidates.

The petitioner asks this Court to ascertain whether his rights have been violated and what relief seems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing Petition for Writ of Certiorari were served upon the defendants' counsel, Ralph H. German, at the following address:

Ralph H. German
Two Chatham Center
Suite 610
Pittsburgh, PA 15219

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APPENDIX

TABLE OF CONTENTS

		Page No.
A.	Letter of John R. Schultz, deputy clerk to Judge Bloch	App. A-1
B.	Order granting motion to dismiss	App. B-1
C.	Affirmation by Appeals Court of judgment order of District Court	App. C-1
D.	Letter and advertisement to Jack Lee, advertising manager of Pittsburgh Catholic opposing judge	App. D-1
E.	Ads printed in the Pittsburgh Catholic for the petitioner opposing election of a judge	App. E-1
F.	Ad printed in the Pittsburgh Catholic supporting election of Patrick R. Tamilia	App. F-1
G.	Ad printed in the Pittsburgh Catholic in support of pro-life judges	App. G-1

LETTER OF JOHN R. SCHULTZ, DEPUTY CLERK TO JUDGE BLOCH, in the United States District Court for Western Pennsylvania regarding Civil Action No. 83-1004, dated August 4, 1983, signed by John R. Schultz.

Please be advised that the pretrial conference scheduled for Friday, November 11, 1983 at 11:00 AM is rescheduled for Friday, November 18, 1983 at 2:00 PM before Judge Alan N. Bloch in Courtroom Number 11, Tenth Floor, U.S. Post Office & Courthouse, Seventh & Grant Streets, Pittsburgh, Pa.

ORDER GRANTING MOTION TO DISMISS issued by Judge Alan N. Bloch in Civil Action No. 83-1004, dated November 15, 1983, signed by Judge Alan N. Bloch.

And now, this 15th day of November, 1983, upon consideration of Defendants' Motion to Dismiss filed in the above captioned matter on May 17, 1983, it is hereby ordered that said Motion is granted.

/s/ Alan N. Bloch
United States District Judge

AFFIRMATION BY APPEALS COURT OF JUDGMENT ORDER OF DISTRICT COURT issued by Circuit Judge Adams, dated June 8, 1984, signed by Judge Adams for Circuit Judges Adams, Weis and Van Dusen, Civil Action No. 83-5893.

Judgment Order. After considering the contentions raised by appellant, it is adjudged and ordered that the judgment of the district court is hereby affirmed. Costs taxed against appellant.

/s/ A. M. Adams
Circuit Judge for Third Circuit

LETTER AND ADVERTISEMENT TO JACK LEE, ADVERTISING MANAGER OF PITTSBURGH CATHOLIC, at 110 Third Ave., Pittsburgh, PA 15222, dated April 14, 1983, signed by Cyril E. Sagan.

Please print the ad below in the next issue of The Catholic in a space of 1 column by three inches. Thank you.

/s/ Cyril E. Sagan
Petitioner

Content of ad: I oppose the nomination of Patrick R. Tamilia as candidate for Judge of Superior Court. I recommend that Democrats and Republicans reject Patrick R. Tamilia for judge. (Courtesy of Cyril E. Sagan)

ADS PRINTED IN THE PITTSBURGH CATHOLIC FOR THE PETITIONER OPPOSING ELECTION OF A JUDGE, paid for by Cyril E. Sagan.

October 26, 1979: Paid Political Advertisement. Are lawyers to be our masters ??? Lawyer Bernard M. Borish of Philadelphia, spokesman for the Penna. Bar Association, has said "...it is a delusion to expect citizens to be able to vote intelligently (for judges). As a matter of fact they can't and don't...". Lawyers of Butler County have endorsed John Dillon for judge. Dillon has NOT been an exemplary judge! Vote "NO" for the retention of Dillon. Reject Dillon.

November 2, 1979: Paid Political Advertisement. Butler County voters, Reject Dillon for judge, vote "NO" retention.

AD PRINTED IN THE PITTSBURGH CATHOLIC SUPPORTING ELECTION OF PATRICK R. TAMILIA, printed November 7, 1983.

Paid political advertisement. Elect Judge Patrick Tamilia, 14 years on the bench, has heard 40,000 cases. Graduate, Duquesne University and its law school. 1979 distinguished alumnus award for work with families. Professor, family law, Duquesne University. Nationally recognized expert in juvenile and family court. A superior judge for Superior Court.

AD PRINTED IN THE PITTSBURGH CATHOLIC IN SUPPORT OF PRO-LIFE JUDGES, printed November 7, 1983.

...Vote Pro-Life... Elect pro-life judges. Our last chance until 1999. Barring retirements and retention elections, the next-scheduled judicial elections will be held in the year 1999. This is our last great opportunity to have a real impact on the State Courts. We MUST assure that pro-life legislation is not struck down by pro-abortion judges. For Supreme Court: Joseph R. Glancey, Vincent A. Cirillo. For Superior Court: Peter Paul Olszewski,Joseph Del Sole, Carl Martin Yost, Frank J. Montemuro, Jr., George A. Yavorek. For Commonwealth Court:Francis A. Barry, Madeline Palladino. Ad paid for by Lifepac, Pa. state number 7900629.